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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,046	06/24/2003	James H. Wright	WRIGP001US	1045
27949 7590 03/11/2008 LAW OFFICE OF JAY R. YABLON 910 NORTHUMBERLAND DRIVE SCHENECTADY, NY 12309-2814				
EXAMINER				
JOYNER, KEVIN				
ART UNIT		PAPER NUMBER		
1797				
MAIL DATE		DELIVERY MODE		
03/11/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/604,046

**Applicant(s)**

WRIGHT, JAMES H.

**Examiner**

KEVIN C. JOYNER

**Art Unit**

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 and 12-60 is/are pending in the application.
- 4a) Of the above claim(s) 17-20, 22 and 30-60 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-16, 21 and 23-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 17, 2007 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-10, 12-16, 21, 23-25, 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sonnabend (U.S. Patent No. 6,571,976) in view of Chandler (U.S. Patent No. 4,852,843).

Sonnabend discloses an anti-splash, anti-spill fluid-holding apparatus, comprising: an inner side surface comprising an inner mid section diameter thereof continuing to an inner upper section diameter thereof; an outer side surface comprising

an outer mid section diameter thereof continuing to an outer lower section diameter thereof which is larger than said outer mid section diameter, from more than two side cross sections; said outer side surface further comprising an outer diameter thereof which, between said outer lower section diameter and an outer upper section diameter thereof, substantially never increases when moving from any lower circumference thereof to any higher circumference thereof, from more than two side cross-sections; an open top circumscribed by said inner upper section diameter; a base circumscribed by said outer lower section diameter; and said inner side surface, said outer side surface, said inward angle, said open top, and said base circumscribed by said outer lower section diameter which is larger than said outer mid section diameter, all comprising a single unitary article of fabrication as disclosed in Figures 1, 4, and 6 (column 4, lines 22-60). Sonnabend does not appear to disclose that said inner mid section diameter continues inwardly to said inner upper section diameter thereof, or an inward angle comprising a less than 90 degree angle tangential to any point along said inner side surface from said inner mid section diameter to said inner upper section diameter, from more than two side cross-sections, wherein said inward angle is greater than zero degrees at said open top.

Chandler discloses an anti-splash, anti-spill fluid-holding apparatus, comprising: an inner side surface comprising an inner mid section diameter thereof continuing to an inner upper section diameter thereof; an outer side surface comprising an outer mid section diameter thereof continuing to an outer lower section diameter thereof; ; said outer side surface further comprising an outer diameter thereof which, between said

outer lower section diameter and an outer upper section diameter thereof, substantially never increases when moving from any lower circumference thereof to any higher circumference thereof, from more than two side cross-sections; and an open top circumscribed by said inner upper section diameter as shown in Figures 1-5. The reference continues to disclose that said inner mid section diameter continues inwardly to said inner upper section diameter thereof, or an inward angle comprising a less than 90 degree angle tangential to any point along said inner side surface from said inner mid section diameter to said inner upper section diameter, from more than two side cross-sections, wherein said inward angle is greater than zero degrees at said open top in column 2, lines 35-60. Said inward angle is provided in order offer extra support and for a container and stabilize said container to reduce any splashes or spills. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Sonnabend to construct said inner mid section diameter to continue inwardly to said inner upper section diameter thereof, and an inward angle comprising a less than 90 degree angle tangential to any point along said inner side surface from said inner mid section diameter to said inner upper section diameter, from more than two side cross-sections, so that said inward angle is greater than zero degrees at said open top in order to offer extra support and for a container and stabilize said container to reduce any splashes or spills as exemplified by Chandler.

Regarding claim 7, the reference of Sonnabend in view of Chandler is fully capable of omitting any anti-splash element comprising an inward angle greater than or equal to 90 degrees tangentially at any point between said inner mid section diameter

and said inner upper section diameter. Concerning claim 8 the reference of Chandler also discloses that said inward angle continuously increases at all points along said inner side surface from said inner mid section diameter to said inner upper section diameter as shown in Figures 1 and 3. More specifically, the lip (24) of Chandler provides a section comprising an inward angle that continually increases from said inner mid section diameter to said inner upper section diameter. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Sonnabend to construct said inner mid section diameter to continue inwardly to said inner upper section diameter thereof, and an inward angle comprising a less than 90 degree angle tangential to any point along said inner side surface from said inner mid section diameter to said inner upper section diameter, from more than two side cross-sections, so that said inward angle is greater than zero degrees at said open top in order to offer extra support and for a container and stabilize said container to reduce any splashes or spills as exemplified by Chandler.

Claims 2-6 further requires that the inward angle comprising a no more than approximately 15 degree angle tangential to any point from said inner mid section diameter to said inner upper section diameter. It would have been well within the purview of one of ordinary skill in the art to optimize the angle tangential to any point from said inner mid section diameter to said inner upper section diameter to no more than 15 degrees in order to maximize the efficiency of the anti-splash, anti-spill in the apparatus. Only the expected results would be attained.

Claims 9 and 10 further requires that the inner section ratio be approximately 1 to 0.875 between said inner mid section diameter and said inner upper section diameter. It would have been well within the purview of one of ordinary skill in the art to optimize the ratio between the inner mid section diameter and the inner upper section diameter in order to maximize the efficiency of the anti-spill, anti-splash apparatus. Only the expected results would be attained.

Claims 12 and 13 further requires that the fluid holding volume is approximately 37.5 cubic centimeters. It would have been well within the purview of one of ordinary skill in the art to optimize the fluid holding volume in order to maximize the appropriate amount of fluid needed for the usage of the apparatus. Only the expected results would be attained.

Claims 14-16 further requires that the inner side surface height be approximately 3 centimeters and the inner mid section diameter by approximately 4 centimeters. It would have been well within the purview of one of ordinary skill in the art to optimize inner surface height and inner mid section diameter in order to maximize the efficiency of the anti-spill, anti-splash apparatus. Only the expected results would be attained.

Claim 21 further requires that the outward angle comprise an approximately 30 degree angle tangential to at least one point from said outer mid section diameter to said outer lower section diameter. It would have been well within the purview of one of ordinary skill in the art to optimize the angle between the outer mid section diameter and the outer lower section diameter in order to maximize the stability of the anti-spill, anti-splash fluid holding apparatus. Only the expected results would be attained.

Claims 23 and 24 further requires that the outer mid section diameter and the outer lower section diameter be at a ratio of approximately 1 to 1.33. It would have been well within the purview of one of ordinary skill in the art to optimize the ratio between the outer mid section diameter and the outer lower section diameter in order to maximize the stability of the anti-splash, anti-spill fluid holding apparatus. Only the expected results would be attained.

Concerning claim 27, Sonnabend discloses that the inner side surface, the outer side surface, said points along said inner side surface forming said inward angle, and said base comprises a single unitary article of fabrication as described above concerning claim 1. Sonnabend does not appear to disclose the fluid holding volume or the angle between the inner mid section diameter to the inner upper section diameter. However, it would have been well within the purview of one of ordinary skill in the art to optimize fluid holding volume and the angle between the inner mid section diameter to the inner upper section diameter in order to maximize the efficiency and the appropriate amount of fluid needed for the usage of the fluid holding apparatus. Only the expected results would be attained. Regarding claims 25 and 28, the apparatus of Sonnabend in view of Chandler is fully capable of being in a sterile state suitable for utilization in surgical procedures.

4. Claims 26 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sonnabend (U.S. Patent No. 6,571,976) in view of Chandler (U.S. Patent No. 4,852,843) as applied to claims 1 and 28 above, and further in view of Withers, Jr. et al. (U.S. Patent No. 5,385,105).



Sonnabend in view of Chandler is relied upon as set forth in reference to claims 1 and 28 above. Sonnabend in view of Chandler does not appear to disclose that the apparatus is in combination with a surgical kit. Withers discloses an anti-splash, anti-spill fluid holding apparatus comprising said fluid holding apparatus (20) and at least one item of surgical equipment other than said fluid holding apparatus as shown in Figures 1-5. The fluid holding apparatus is provided in order to prevent fluid from spilling out of said apparatus (column 6, lines 38-68). More specifically, the anti-spill fluid holding apparatus is comprised of the wall mount and the container that is placed in said wall mount. The surgical instruments placed in said container is a surgical item. The wall mount, container and surgical items are a kit as broadly defined. Therefore, Withers discloses said fluid holding apparatus in combination with a kit comprising a surgical item. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include the apparatus of Sonnabend in view of Chandler in combination with a surgical kit in order to prevent a surgical container and fluid from tipping and spilling as exemplified by Withers.

### ***Response to Arguments***

5. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN C. JOYNER whose telephone number is (571)272-2709. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Leigh McKane/  
Primary Examiner, Art Unit 1797

KCJ